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35A-3-310.5 Child care providers -- Criminal background checks -- Payment of costs -- Prohibitions -- Department rules.

(1) This section applies to a child care provider who:

- (a)
 - (i) is selected by a recipient of a child care assistance payment; or
 - (ii) is a recipient of a child care assistance payment;
- (b) is not required to undergo a criminal background check with the Department of Health, Bureau of Child Care Licensing;
- (c) is not a license exempt child care center or program; and
- (d) is an eligible child care provider in accordance with department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2)

- (a) A child care provider identified under Subsection (1) shall submit to the department the name and other identifying information, including a set of fingerprints, of:
 - (i) existing, new, and proposed individuals who provide or may provide child care; and
 - (ii) individuals who are at least 18 years of age and reside in the premises where the child care is provided.
- (b) The department may waive the fingerprint requirement under Subsection (2)(a) for an individual who has:
 - (i) resided in Utah for five years prior to the required submission; or
 - (ii)
 - (A) previously submitted a set of fingerprints under this section for a national criminal history record check; and
 - (B) resided in Utah continuously since submitting the fingerprints.
- (c) The Criminal Investigation and Technical Services Division created within the Department of Public Safety under Section 53-10-103 shall:
 - (i) process and conduct background checks on all individuals as requested by the department; and
 - (ii) submit required fingerprints to the U.S. Federal Bureau of Investigation for a national criminal history background check of the individual.
- (d) If the department waives the fingerprint requirement under Subsection (2)(b), the Criminal Investigation and Technical Services Division may allow the department or its representative access to the Criminal Investigation and Technical Services Division's database to determine whether the individual has been convicted of a crime.
- (e) The child care provider shall pay the cost of the history background check provided under Subsection (2)(c).

(3)

- (a) A child care provider identified under Subsection (1) shall submit to the department the name and other identifying information of an individual, age 12 through 17, who resides in the premises where the child care is provided.
- (b) The department or its representative shall access juvenile court records to determine whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile court of committing an act which, if committed by an adult, would be a felony or misdemeanor if:
 - (i) the individual described in Subsection (2) is under the age of 28; or
 - (ii) the individual described in Subsection (2):
 - (A) is age 28 or older; and

- (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (4) Except as provided in Subsection (5), a child care provider under this section may not permit an individual described under Subsection (3)(b) to:
 - (a) provide subsidized child care; or
 - (b) reside at the premises where subsidized child care is provided.
- (5)
 - (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection (4):
 - (i) a specific misdemeanor;
 - (ii) a specific act adjudicated in juvenile court, which if committed by an adult would be a misdemeanor; and
 - (iii) background checks of individuals other than the provider who are residing at the premises where subsidized child care is provided if that child care is provided in the child's home.
 - (b) In accordance with criteria established by department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director or the director's designee may consider and exempt individual cases, not otherwise exempt under Subsection (5)(a), from the restrictions of Subsection (4).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to determine:
 - (a) whether a child care subsidy payment should be made prior to the completion of a background check, particularly in the case of a delay in making or completing the background check; and
 - (b) if, and how often, a child care provider shall resubmit the information required under Subsections (2) and (3).